



STAFF REPORT

To: Gallatin County / Bozeman Area Board of Adjustment

From: Amy Waring, Code Compliance Specialist

Subject: Dreiseszun/Taylor Appeal of a Code Compliance Specialist decision regarding an alleged violation by Baldwin at 3051 Texas Way, Bozeman, MT

Hearing Date: March 18, 2008; 3:30 pm

Location: Gallatin County Courthouse – Community Room
311 W. Main, Bozeman, MT

COMPLAINT

1. On May 3 and 7, 2007, I received complaints that Chuck Baldwin was operating a semi-tractor with heavy equipment in and out of his property at 3051 Texas Way, Bozeman, Montana in violation of Sections 12 (R-S District) and 50.150 (home occupations) of the Gallatin County / Bozeman Area Zoning Regulation (Regulation). **Exhibit A.**

APPLICABLE REGULATIONS

2. The Gallatin Regulation was adopted on July 27, 1999, and amended thereafter.
3. Section 12 of the Regulation regulates permitted, conditional, and accessory uses in the Residential-Suburban (R-S) District. The intent of the R-S District is to allow Planned Unit Developments (PUD's) and single-household developments on lots of one acre. Single-family dwellings are a permitted use. Home occupations and private garages are a permitted accessory use.
4. With the exception of a limited number of conditional uses (use as veterinary uses and day care centers), commercial and industrial uses are prohibited in the R-S District.

5. Section 50.150 of the Regulation regulates home occupations. **Exhibit B.** A home occupation must be clearly incidental and secondary to the use of the dwelling for residential purposes, and shall not adversely affect the character of the neighborhood.
6. Section 50.150(C) of the Regulation provides conditions for a home occupation, including:
 - a. Such occupation shall be conducted solely by resident occupant in their residence with not more than one half-time nonresident employee.
 - b. No more than twenty-five (25%) of the gross area of all structures shall be used for such purpose.
 - c. No use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure.
 - d. No home occupation shall cause an increase in the use of any one or more utilities (water, sewer, garbage, etc.) so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood.
 - e. There shall be no outside storage of any kind related to the home occupation.
 - f. The use may increase vehicular traffic flow and parking by no more than one additional vehicle at a time.
 - g. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists.
7. Section 50.150(F) of the Regulation prohibits uses that have a pronounced tendency to increase beyond the limits permitted for a home occupation, such as auto repair, dental offices, painting of vehicles, trailers, or boats, and contractor's offices, unless no construction activity or storage of materials and/or equipment occurs at the residence.
8. Pursuant to MCA Section 76-2-223(a) and Section 56.030(A)(1) of the Regulation, the BOA shall hear and decide appeals where it is alleged there is an error made by an administrative official. The BOA may reverse or affirm, wholly or partly, or modify the July 17, 2007 decision by the Code Compliance Specialist.

9. Pursuant to MCA Section 76-2-224, the concurring vote of three members of the BOA is necessary to reverse the July 17, 2007 decision.

COMPLIANCE FINDINGS AND DECISION

10. Chuck and Jolene Baldwin own and reside on the property at 3051 Texas Way, Bozeman. The 2.46-acre tract is described as Lot 6 in the North ½ of the Northeast ¼ in Section 20, Township 2 South, Range 5 East, Gallatin County (Aspen Basin Subdivision). They have lived there for approximately three years.
11. The Baldwin's property is located in the R-S (Residential Suburban) District of the GC/BA Zoning District.
12. In response to the complaints filed by the appellants, I inspected Mr. Baldwin's property on May 30, 2007. On that date, I did not observe a semi truck, heavy equipment, or any other construction/contractor types of equipment outside Mr. Baldwin's residence. I did not observe any outside storage of vehicles or equipment that would indicate a business was being operated from the property. The property appeared to be a well-maintained residence. Appellants allege that Mr. Baldwin hauls heavy equipment in and out of his property. I did not see anything to support this claim.
13. On June 5, 2007, I discussed the complaints with Mr. Baldwin, and he stated the following:
 - a) The shop was already on the property prior to his purchase. Mr. Baldwin stated the previous owner was an electrician, and conducted a home occupation on the property.
 - b) Mr. Baldwin stated that he keeps his semi-truck inside the shop most of the time, and stores his flatbed trailer outside. He has future plans to enlarge the shop to store the trailer inside and install a privacy fence.
 - c) Mr. Baldwin hauls heavy equipment for a living. He does not store heavy machinery at home.
14. On June 11, 2007, I determined that Mr. Baldwin was not in violation of the Regulation, and that his outside storage of a trailer is not any different than people storing horse trailers, flatbed trailers, etc. outside on their property. **Exhibit C.**

15. On June 28, 2007, Sandy Taylor submitted a request to reevaluate my June 11, 2007 decision. **Exhibit D.** She equates Mr. Baldwin's hauling business to a construction business. She states:
- a) Mr. Baldwin has brought heavy equipment home on the lowboy trailer, although it is not an every day occurrence.
 - b) A home occupation should be conducted that neighbors are unaware of its existence, which is hardly the case when a semi-tractor and lowboy trailer are driving up and down the road and parked in the driveway visible to any passerby.
 - c) My June 11, 2007 decision sets a precedent that conflicts with the residential character of the Texas Way neighborhood, and has the potential of lowering the property values of residential properties on Texas Way.
 - d) My June 11, 2007 decision has changed the residential character of the neighborhood.
 - e) Mr. Baldwin stores his lowboy trailer and sometimes his semi-tractor outside, which is a violation of the conditions of a home occupation. My comparison of his lowboy heavy equipment hauling trailer to a horse trailer used for personal recreational use is not a valid comparison.
16. On July 10, 2007, I met with Chuck Baldwin on his property to discuss Ms. Taylor's additional complaint, and to view his trailer and semi-truck. I observed Mr. Baldwin's flatbed trailer parked outside adjacent to his shop, and his semi-truck parked inside his shop. **Exhibit E.** Mr. Baldwin provided the following information:
- a) He parks his semi-truck inside his shop ninety percent of the time. He occasionally parks it outside while cleaning the shop. He parks the flatbed trailer outside adjacent to his shop (between the shop and his house).
 - b) In general, Mr. Baldwin makes two trips per day, Monday through Friday. He usually does not leave the house before 7:00 am, and returns by 10:00 pm, nor does he haul equipment on weekends or holidays.
 - c) Mr. Baldwin does not have any onsite employees.
 - d) Mr. Baldwin is busier in the summer, and business slows during the winter.

- e) Mr. Baldwin does not bring any work-related equipment home. He occasionally brings equipment home to make improvements to his personal property, such as the forklift that was in his shop during my July 10, 2007 inspection.
 - f) Mr. Baldwin has plans to enlarge his shop in order to store both the semi-truck and flatbed trailer inside. He also plans on installing a privacy fence in the near future.
17. In 2004-2005, I reviewed a similar complaint against Diamond M Drilling at 2840 Texas Way. The complaint related to an alleged violation of home occupation standards. In this instance, I observed numerous pieces of equipment and vehicles stored outside. I determined that Diamond M Drilling was violating the home occupation standards and directed them to move all their equipment and vehicles inside their building, or to remove them from the property.
18. Diamond M Drilling had equipment and multiple vehicles stored outside, whereas Mr. Baldwin has one work vehicle stored inside and a single flatbed trailer stored outside. The trigger for a violation at Diamond M was multiple and outside storage. Mr. Baldwin's residence is neat and tidy. It does not look like a contractor's office or construction yard. It does not rise to the level that Diamond M Drilling presented in 2004-2005.
19. I surveyed the Aspen Basin subdivision for signs of other home occupations. In addition to Diamond M Drilling (#18 above), I observed ten or more vehicles and two shops related to Townsend Backhoe Service at 170 Joe's Way. In terms of impact, Townsend Backhoe Service has far more vehicles, traffic and visibility than Mr. Baldwin's single vehicle.
20. On July 17, 2007, I affirmed my June 11, 2007 decision and determined that Mr. Baldwin complies with permitted and accessory uses in the R-S District, and has not exceeded the scope of a home occupation. **Exhibit F.**

Rationale for Decision

21. My decision that Mr. Baldwin complies with permitted and accessory uses in the R-S District, and is in compliance with the home occupation standards is based upon the following rationale:
- a) Section 50.150(C) requires that a home occupation shall be conducted solely by the resident occupant in their residence with not more than one half-time nonresident employee. Mr. Baldwin complies with this condition, as he does not have any onsite employees.
 - b) Section 50.150 (C) requires that no more than twenty-five (25%) of the gross area of all structures shall be used for such purpose. Mr. Baldwin's semi truck occupies less than half the space in his shop. Even if you take measure half the space of his shop (approximately 1200 square feet), that is still only 22% of his total square footage of all the structures on his property. Mr. Baldwin complies with this standard.
 - c) Section 50.150 (C) provides that no use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment that would change the fire rating of the structure. All he does is park his semi truck inside his shop, which does not involve any alteration that would change the fire rating of the structure. Mr. Baldwin complies with this standard.
 - d) Section 50.150 (C) provides that no home occupation shall cause an increase in the use of any one or more utilities (water, sewer, garbage, etc.) so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood. All he does is park his semi truck inside his shop, which does not likely increase utility usage beyond normal residential use. Mr. Baldwin complies with this standard.
 - e) Section 50.150 (C) provides that there shall be no outside storage of any kind related to the home occupation. Mr. Baldwin parks one trailer outside next to his shop. He does not store any heavy equipment, multiple vehicles or any other equipment outside. The trailer, in and of itself, is not indicative of a home occupation. In addition, numerous residents of the Aspen Basin subdivision have

trailers, recreational vehicles, and boats stored outside. Mr. Baldwin's flatbed trailer is similar in appearance to these other trailers, and does not detract from the residential character of the neighborhood. **Exhibit F.**

- f) Intermittent and temporary parking of his semi truck outside as Mr. Baldwin departs/arrives from the property or cleans his shop does not violate the Regulation. To remain in compliance with the Regulation, Mr. Baldwin may not park his semi-truck and trailer in the Texas Way road right-of-way, or store any other business-related heavy equipment outside.
- g) Section 50.150 (C) provides that the use may increase vehicular traffic flow and parking by no more than one additional vehicle at a time. Mr. Baldwin complies with this standard. He makes approximately two trips per day, and does not have anyone making trips to his property during the normal course of business.
- h) There are other businesses in the neighborhood that park work vehicles at home, including Townsend Backhoe Service, Diamond M Drilling, and High Mountain Electric. The home occupation standards do not prohibit parking a work vehicle at home, nor does the Regulation distinguish between size of work vehicles.
- i) Section 50.150 (C) provides that no use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists. Mr. Baldwin complies with this standard. All he does is park his semi truck inside his shop. There may be a minimal amount of vehicular noise when he comes and goes, but it is not excessively loud or frequent.
- j) Mr. Baldwin's two trips per day, inside storage of his semi trailer in less than 25% of his gross square footage, and outside storage of a single, flatbed trailer that is similar in appearance to other trailers stored outside in the neighborhood does not exceed the scope of a home occupation.
- k) Mr. Baldwin's property is well kept, and his use does not detract from the residential character of the neighborhood. The outside appearance of Mr.

Baldwin's property is that of a normal residence, not a construction or storage yard.

APPEAL

12. On August 9, 2007, Howard Dreiseszun and Sandy Taylor appealed my July 17, 2007 decision. The appeal was timely. **Exhibit H.**

13. Appellants allege that Mr. Baldwin's hauling business does not comply with the accessory uses listed in Section 12.020(C) of uses permitted in the R-S District.

Response: Private garages and other buildings and structures typically accessory to residential or agricultural uses are a permitted, accessory use in the R-S District. Home occupations are also a permitted, accessory use.

13. Appellants allege that Mr. Baldwin brought equipment home with him on July 16, 2007.

Response: Mr. Baldwin occasionally brings equipment home for personal use, to make improvements to his property. Since the equipment was for personal improvements, it cannot be considered for a home occupation.

14. Appellants allege that a semi tractor and low-boy trailer that are longer than 40 feet and capable of hauling thousands of pounds of equipment is not your ordinary back and forth to work type of vehicle, such as the pickups or automobiles driven by other people.

Response: There is nothing in the Regulation that prohibits bringing a work vehicle home, nor is there any standard that stipulates that vehicles of a certain size may not be brought home.

15. Appellants allege that allowing Mr. Baldwin to park his semi-truck and trailer at home jeopardizes the residential nature of the Texas Way neighborhood and any other area designated as R-S Zoning.

Response: My observation of the Baldwin property was that of a nice, well-kept residence, and I did not observe anything that would detract from the residential character of the neighborhood. Appellants have not submitted any evidence to the contrary.

STAFF SUGGESTED ACTION

The Gallatin County / Bozeman Area Board of Adjustment, after hearing and considering all public testimony, must determine if the July 17, 2007 decision by the Code Compliance Specialist was made in error, and either affirm, modify, or reverse the decision. Based upon the evidence presented in this report, my determination as the Code Compliance Specialist should be affirmed.

EXHIBITS

- A. Complaints
- B. Section 50.150 Home Occupation Standards
- C. June 11, 2007 Decision
- D. June 28, 2007 letter from Sandy Taylor
- E. Photos of Mr. Baldwin's residence and equipment
- F. July 17, 2007 Decision
- G. Photos of other trailers in the neighborhood
- H. August 7, 2007 Appeal